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New Rules Concerning LGB Students and ROTC

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Gay and Lesbian Students, ROTC, and the New Rules

Faculty must recognize the dangers military policy poses to students in ROTC.

BY LOUIS CROMPTON

DURING THE FIRST HALF of 1993, the United States witnessed an impassioned debate on the status of homosexuals in the armed services. President Clinton's effort to lift the ban failed, but as a result of the debate the Pentagon issued a new policy statement, signed by the president on July 19. Faculty, student affairs staff, and administrators may well be concerned about how these new guidelines will affect students in campus Reserve Officers Training Corps (ROTC) programs. Though Congress may modify the new guidelines when it writes them into law, it would appear that their final form will not vary much from the July 19 statement.

Many gay men and lesbians have served and are serving in the military, most of them without difficulties, some with distinction. The campus community has not always ap-

preciated that many of these men and women have entered the services via the ROTC programs (The Army, Navy, and Air Force have in the past drawn about a third of their officers from ROTC.) Until now, when faculties have expressed concern over ROTC, it has been with its discriminatory *policy*—rarely with the dilemmas facing individual gay and lesbian students already in such programs.

For several decades, 17- or 18-year-old high school students who have wished to enroll in ROTC and to apply for scholarships have been asked to fill out a standard, detailed application form. Among the many questions one stood out clearly and unequivocally: "Are you a homosexual or a bisexual?" (This is how the Air Force framed the question on recent ROTC applications. The phrasing differed slightly for the different services.) The question asked for an explicit yes or no response.

A moment's thought, of course, will reveal the difficulty teenagers must have had in answering this question. Adolescence is often a period of doubt and uncertainty about sexual identity, especially for young men and women whose orientation is gay or lesbian. Often students about to leave high school or just entering college have not fully realized what their sexual orientation is. Others may be aware of an attraction for the same sex but may naively believe such feelings will vanish in time or can be suppressed. Students have enrolled, and will *continue* to enroll, in ROTC before they know whether or not they are homosexual.

AWARENESS OF SEXUAL IDENTITY IS something students usually come to through a slowly developing process. Often it is a discovery they make during their



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college years, frequently with painful readjustments in the face of social hostility. If, in the meantime, they have enlisted in the military, these difficulties may be enormously compounded.

Under the new policy, recruits for ROTC and other military programs will no longer be asked any questions about their sexual orientation. This will at least remove one danger. In the past gay students who answered "no" to the question "Are you homosexual?" were liable, under military law, to a charge of "fraudulent enlistment," which carried with it "such punishment as a court-martial shall provide." Nevertheless, any gay or lesbian student who enrolled in ROTC before January 1993 (when the question was dropped) who chooses to come out of the closet still faces the threat of such prosecution.

The new Pentagon guidelines incorporate a so-called "don't ask, don't tell" policy that abolishes the question on sexual orientation on recruitment forms. Does this improve the situation for gay and lesbian students in ROTC? The answer seems to be: only in a very limited way.

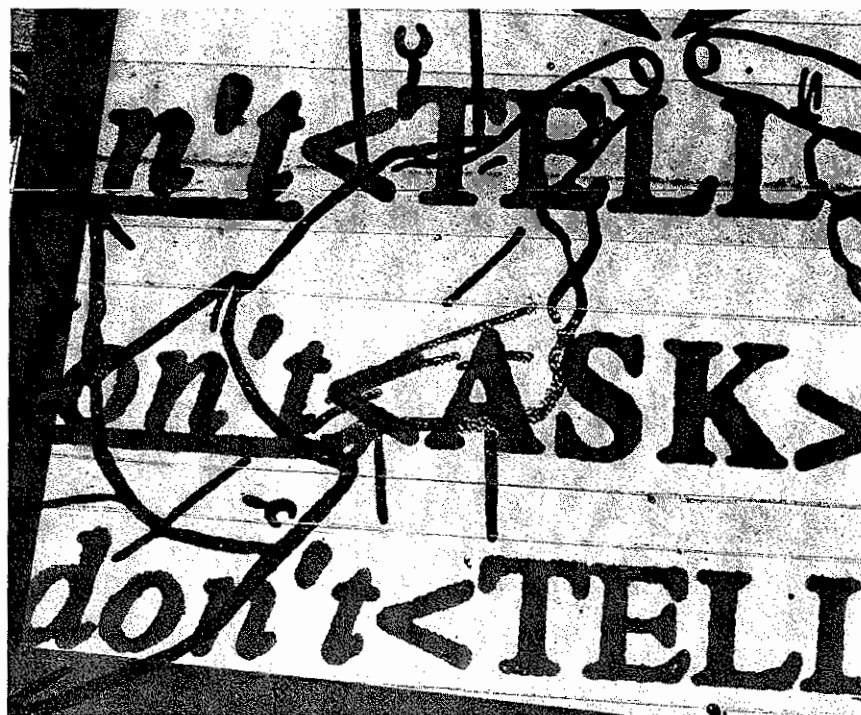
The new rules are complex and not easy to grasp. The stated position of the Pentagon is that mere status, i.e., sexual orientation *per se*, will not trigger an investigation and a discharge from ROTC. Such discharges will occur only for homosexual conduct. The paradox lies in the fact that conduct is defined to include not only sexual behavior (including holding hands, dancing, or kissing) but also any statement by members of the military identifying themselves as homosexual. According to Pentagon policy the statement "I am gay" will ordinarily lead to an investigation and discharge.

The rationale for this is somewhat murky. The Pentagon maintains that such a statement will create a "presumption" that the serviceperson is engaging in homosexual behavior, forbidden under the sodomy statute in the Uniform Code of Military Justice. The onus of proof for rebutting this presumption is on the accused, who must show that he or she has no "propensity" to engage in homosexual acts. It is on the face of it hard to see how any gay or lesbian student who had come out could do this, since ordinarily the statement "I am a heterosexual" or "I am homosexual" would be taken to mean that one has a propensity to heterosexual or homosexual behavior. This odd formulation seems to have been made to obviate the courts' finding that a statement about one's sexual orientation constitutes protected speech. The con-

clusion would seem to be that gay or lesbian students in ROTC who identify themselves as homosexual to other ROTC personnel, or to friends, or to teachers, or (possibly) to a member of a counseling staff, would be liable to discharge. At a briefing for the press at the White House on July 16, a senior administration official said, in reply to questions, that it would be "unwise" for persons in the military to say "I am gay" since they would be entering a "serious danger zone."

The question obviously arises: under the new "don't tell" policy who can a homosexual student in ROTC speak to about his or her sexual orientation? The July 19 statement devotes only one brief sentence to this issue. It reads, in its entirety, "Speech within the context of priest-penitent, husband-wife, or attorney-client communications remains privileged." Presumably this would not cover speech between a student and an academic advisor, a relation not usually regarded as legally privileged. And what about psychological counselors, who are not included in this short list? (Or non-Catholic campus chaplains, for that matter?) Student counseling centers at colleges and universities are often called upon to counsel gay and lesbian students who are facing the difficult task of coming to terms with their sexual orientations. These students, already contending with unusual stress and uncertainty, need to have someone to turn to for confidential professional advice. Under the "don't tell" policy, would college counseling centers be "danger zones" for gay and lesbian students in campus ROTC programs?

Students have enrolled, and will continue to enroll, in ROTC before they know whether or not they are homosexual.



It is also noteworthy that doctor-patient consultations are missing from the list of specifically privileged communications. Under the letter of the Pentagon's new "don't tell" policy, divulging one's orientation to medical personnel at university health centers would legally constitute "homosexual conduct" and could be the basis for a discharge from the military. It is true that health centers have confidentiality policies, but under them confidentiality is not absolute, and students are often required to waive it, for instance in making their medical files available to insurance companies. Surely homosexual ROTC cadets need to be specifically assured that they can make disclosures to doctors and nurses without fear of penalties.

The new policy does appear, on its face, to take a more liberal attitude toward freedom of association. The guidelines provide that "association with known homosexuals, possessing or reading homosexual publications, or marching in a gay rights rally" will not of themselves lead to an investigation or a discharge. But once again such associations appear fraught with danger. The same senior administration official warned that a serviceperson would "not be well-advised to go to a gay bar or march in a parade." This would seem to make it risky for a gay or lesbian ROTC cadet to seek the kind of social support he or she would ordinarily need during college years—having openly gay friends, attending the meetings of a campus gay student group, or associating with gay faculty mentors. Academic freedom would

be abridged in that such students, when participating in classroom discussions on homosexuality in sociology, psychology, law, or literature, could not speak from a personal point of view.

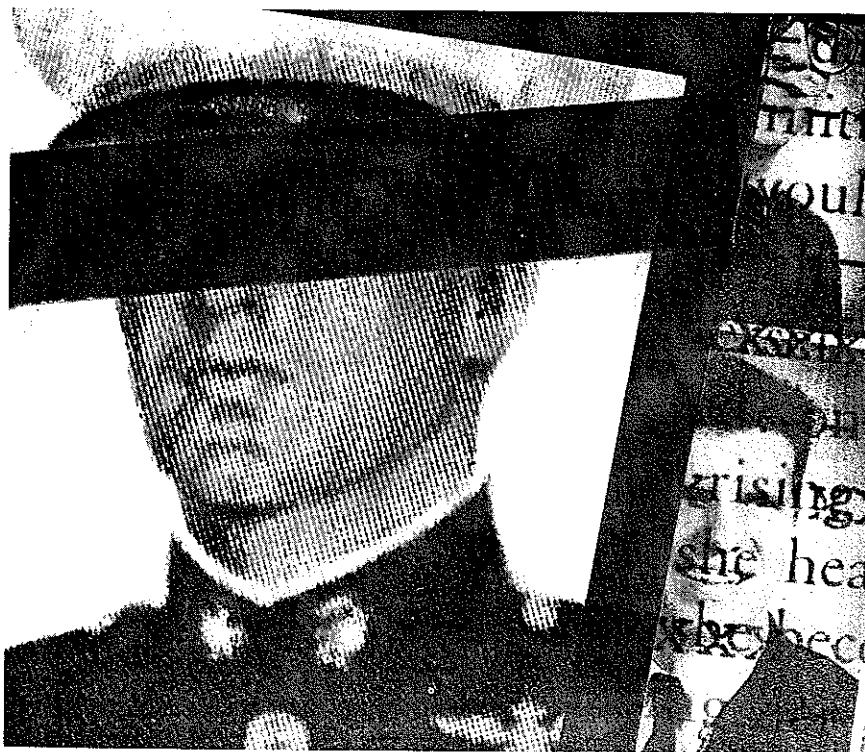
ANOTHER ISSUE THAT DESERVES THE attention of faculty is the requirement that students who are disenrolled from campus ROTC programs because they are homosexual must repay military scholarship monies. In 1992, all midshipmen in Navy ROTC programs had to sign an affidavit that made this penalty explicit. Presumably this action was taken to stem what the Navy feared might be a rash of self-disclosures on college campuses. The affidavit read:

I understand that homosexuality is incompatible with military service and that I may be disenrolled from my program for this reason. A homosexual is defined as a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts. . . I may be disenrolled if I (1) engage in, attempt to engage in, or solicit another to engage in a homosexual act; (2) *state that I am a homosexual or bisexual*; (3) marry or attempt to marry a person known to be of the same biological sex. I further understand that if I, at any time, am disenrolled from the naval ROTC program because of homosexuality, as defined above, I may be required to repay all scholarship monies expended on my behalf. (Emphasis added.)

Recoupment of scholarship funds has not been merely an idle threat. In 1990, when James Holobaugh, a student in Army ROTC at Washington University in St. Louis, informed his commanding officer he was homosexual but wanted to serve out his military obligations, the Army discharged him and sent him a bill for \$25,000. After protracted negotiations, including intervention by the American Civil Liberties Union and twenty-four members of Congress, the Army dropped its demands for repayment. At the Massachusetts Institute of Technology, two other students were asked to repay scholarships, one of nearly \$40,000, the other of more than \$50,000. Once more, both were willing to fulfill their military contracts. Under congressional pressure, the ROTC again backed off. In all three instances, it should be noted, the cadets said they had not known they were homosexual when they entered college.

Each of these cases received national publicity. But most homosexual students re-

Apparently, under the new policy, college counselling centers would be "danger zones" for gay and lesbian students in ROTC.



make repayments are not willing to "come out" and face media scrutiny. Randy Shilts, in his recent book, *Conduct Unbecoming: Gays and Lesbians in the U.S. Military*, has confirmed that they still face problems, despite an official order by former Secretary of Defense Dick Cheney to cease recoupment efforts:

Even while official Pentagon spokesmen claimed it was Defense Department policy not to pursue recoupment in gay discharges, the actual policy was to seek repayment from anyone who did not go to the newspapers or talk about it publicly. ROTC cadets and service academy students who were not willing to become *causes célèbres* would find themselves stuck with substantial bills, no matter what the civilians who were nominally in charge of the Pentagon ordered to the contrary. (pp. 710-711)

If any doubt remained, the Navy's 1992 affidavit served notice that recoupment attempts would indeed continue. One student's parents found out their son was homosexual when they discovered a \$27,000 lien ROTC authorities had placed on their home.

Students who sign up for ROTC and later discover they are homosexual have been, and will be, forced to live under tight constraints. It is dangerous for them to make friends with other gay and lesbian students on campus, or to attend the meetings of campus gay and lesbian organizations or their social functions. The result is that they must live uncomfortable double lives, socially isolated from the gay student community where they would ordinarily find psychological support. It is not surprising that occasionally cadets find such an existence so great a strain that they seek release from their contracts, or the right to fulfill them without disguise.

OVER THE LAST SEVERAL YEARS scores of American colleges and universities have protested the exclusionary policy of the Department of Defense. Indeed, over one hundred institutions of higher learning have anti-discrimination policies that prohibit discrimination based on sexual orientation as a matter of general policy. In 1990 the presidents of the Association of American Universities, the American Association of State Colleges and Universities, the National Association of State Universities and Land-Grant Colleges, and the American Council on Education jointly expressed concern with the policies of the Department of Defense. They sought, without avail, to meet

with the secretary of defense.

Before the 1992 election campaign raised the possibility of presidential action, faculties took various measures to promote change. Many voted to send letters of protest to the Department of Defense, and asked the presidents of their institutions to lobby their states' congressional delegations for new policies. Others have voted sanctions against local ROTC programs. Some colleges, like Pitzer College in Claremont, California, peremptorily dropped ROTC. Harvard abandoned a plan to reinstitute ROTC when it was pointed out that the military ban conflicted with Harvard's own policy on non-discrimination. More often, institutions proposed deadlines for changes, after which programs would be discontinued. A notable example of this approach occurred at MIT, a campus with unique ties to the Defense Department. MIT's faculty, with the support of the president, voted to phase out ROTC by 1998 if a change in policy did not take place.

Most often, however, presidents and governing boards have hesitated to support faculty calls for ending on-campus military programs. In some states the law requires courses in military training (as under the Morrill Act at Land-Grant Colleges, for instance). Local political sentiment makes severance of ties with ROTC impracticable at most state universities, especially in the Midwest and South. We may expect that (barring cutbacks for economic reasons) most ROTC programs will re-

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main in place. And, no doubt, there will continue to be a significant number of gay and lesbian students in ROTC programs

CHALLENGES TO THE MILITARY'S exclusionary policy have been made in the courts for two decades. In the Keith Meinhold case a lower court recently held that the ban was unconstitutional. The case is now on appeal to the Ninth Circuit Court of Appeals. Doubtless the new "don't tell" policy will also face court tests. But it may take several years for the courts to resolve the problem fully.

In the meantime, how can faculty minimize the adverse effects of a situation that many see as basically unjust? We can anticipate that the "don't tell" policy will meet with repeated personal challenges and that some of these will begin on college campuses. If gay and lesbian students "come out" in increasing numbers, military hearings will take place to enforce disenrollment. In the past faculty have paid little attention to the work of military tribunals on campuses, regarding the military as a world apart where ordinary academic standards have not applied. Nevertheless, the AAUP's *Joint Statement on Rights and Freedoms of Students* (Academe, July-August 1993) does have an important section on "Procedural Standards in Disciplinary Proceedings." These standards, for instance, require that "disciplinary proceedings should be instituted only for violations of standards of conduct... published in advance through such means as a student handbook or a generally available body of institutional regulations." Colleges might, for example, require that ROTC units include in their notices in all college publications an explicit statement of their policy on gay and lesbian students. This would insure that these students would have clear notice *before enrollment* of what sanctions and restrictions they faced.


Here is an example of the type of notice that might appear in undergraduate course and program bulletins:

The Reserve Officers Training Corps program is not in compliance with the non-discrimination policy of the University of _____ with regard to sexual orientation. Students are cautioned that cadets enrolled in ROTC who identify themselves as homosexual or are so identified by others will be discharged from the program and required by military policy to pay back scholarship monies. They may also, when on active duty for train-

ing, be liable to court-martial under the sodomy statute of the Uniform Code of Military Justice (Title 10, sec. 925). Students facing such discharges who desire counsel and assistance should consult with [name of designated university officer]

Such a notice would be in line with the new Pentagon guidelines, which state, under the rubric of "Accession Policy," "applicants for military service will no longer be asked to reveal if they are homosexual or bisexual, but applicants will be informed of the conduct that is proscribed for members of the armed force, including homosexual conduct." While states rarely enforce sodomy laws against consenting adults, men and women in the services do serve prison sentences for such acts. Furthermore, the threat of long prison terms for homosexual conduct is regularly used at administrative hearings to obtain confessions from service personnel; Shilt's study, cited above, provides ample documentation.

For most gay and lesbian students in ROTC, confidentiality will be a prime consideration. If they need to negotiate with the Defense Department over repayment, etc., they will need knowledgeable and supportive counselors who will guarantee confidentiality. For this reason, there should be some publicly designated university officer or committee on whose expertise and support gay and lesbian cadets can depend.

UNTIL NOW, THE DIFFICULT situation of gay and lesbian ROTC cadets at colleges and universities has been largely ignored. Indeed, the very existence of these students has, but for very exceptional cases, passed unnoticed. They nevertheless make up some of the roughly sixty thousand students now enrolled in ROTC classes. They have generally been conservative students with strong patriotic ideals, little given to protest and with little contact with activist organizations. Some come from military families and are even more acutely aware of the stigma homosexuality entails than their classmates. Faculty, for their part, have until now seen the military as only peripherally subject to campus standards and procedures. But just as the turmoil of the 1960s led the AAUP, for the first time in its history, to formulate a general statement on student rights, so this new national crisis of conscience should prompt professors, staff, and administrators to involve themselves in an issue of justice and equity that has been too long overlooked. 

How can faculty minimize the adverse effects of a situation many see as basically unjust?